

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION – CINCINNATI**

YUSUF BROWN-AUSTIN,	:	Case No. 1:24-cv-397
	:	
Plaintiff,	:	Judge Matthew W. McFarland
	:	
v.	:	
	:	
ANNETTE CHAMBERS-SMITH, et al.,	:	
	:	
Defendants.	:	
	:	

ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 48)

This action is before the Court upon the Report and Recommendation (the “Report”) (Doc. 48) of United States Magistrate Judge Stephanie K. Bowman, to whom this case is referred pursuant to 28 U.S.C. § 636(b). In the Report, Magistrate Judge Bowman recommends granting Defendants CoreCivic, Inc., Warden Douglas Fender, Deputy Warden Richard Phiffer, Unit Manager Douglas, Warden David Bobby and Assistant Investigator Wyman’s (“CoreCivic Defendants”) Motion to Dismiss (Doc. 20), granting in part and denying in part Defendants Annette-Chambers-Smith, Christopher Lambert, Cynthia Davis, and Jeremy Oppy’s (“State Defendants”) Motion to Dismiss (Doc. 25), and denying Plaintiff’s Motion for Spoliation Sanctions (Doc. 9), Motion for Leave to File a Reply (Doc. 31), Motion to File an Amended Complaint (Doc. 33), and Motion for Declaratory Judgment (Doc. 34). Plaintiff filed an Objection (Doc. 54), to which Defendants filed Responses (Docs. 57, 60). Thus, the matter is ripe for the Court’s review.

In Plaintiff's objection, he argues that he should be granted leave to file an amended complaint because Defendants have not yet filed a responsive pleading. (Objection, Doc. 54, Pg. ID 734.) The Magistrate Judge recommended that Plaintiff not be granted leave, however, because his Proposed Amended Complaint was futile as it failed to sufficiently allege a RICO claim. (Report, Doc. 48, Pg. ID 552-555.) Regardless of whether Defendants have filed a responsive pleading, Plaintiff's argument fails because he is unable to cure the defects in his Proposed Amended Complaint. Accordingly, Plaintiff's Objection is overruled.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a de novo review of the record in this case. Upon said review, the Court finds that Plaintiff's Objection is not well-taken and is accordingly **OVERRULED**. The Court **ADOPTS** the Report (Doc. 48) and **ORDERS** the following:

1. Plaintiff's Motion for Spoliation Sanctions (Doc. 9) is **DENIED**;
2. CoreCivic Defendants' Motion to Dismiss (Doc. 20) is **GRANTED**;
3. State Defendants' Motion to Dismiss (Doc. 25) is **GRANTED IN PART AND DENIED IN PART**;
 - a. Plaintiff's claims of retaliatory conduct by Defendants Davis and Oppy relating to the lack of heat in his cell and a security classification hearing held in August 2023 **SHALL PROCEED**;
 - b. All other claims against all other Defendants are **DISMISSED**;
4. Plaintiff's Motion for Leave to File an Amended Complaint (Doc. 33) is **DENIED**;
5. Plaintiff's Motion for Declaratory Judgment (Doc. 34) is **DENIED**; and

6. Plaintiff's Request for Leave to File a Reply and Attached Exhibits to Defendants' Cynthia Davis and Jeremy Oppys' Memorandum in Opposition to Plaintiff's Motion for Spoilation Sanctions (Doc. 31) is **DENIED AS MOOT**.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: 
JUDGE MATTHEW W. McFARLAND